IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2135 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE SHARAD D.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BARODA MUNICIPAL CORPORATION - Petitioner(s)

Versus

SMT. VALIBEN DAHYABHAI KATARIA - Respondent(s)

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Appearance :

MR PRANAV G DESAI for Petitioner(s) : 1,
MR RD RAVAL for Respondent(s) : 1,
RULE NOT RECD BACK for Respondent(s) : 1.2.1

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CORAM : HONOURABLE MR.JUSTICE SHARAD D.DAVE

Date : 18/11/2005

CAV JUDGMENT

1.By filing this petition under Article 227 of the Constitution of India, the petitioner – Vadodara Municipal Corporation has challenged the judgment and

award dated 6.10.1994 passed by the Presiding Officer, Labour Court, Vadodara, by which the Labour Court, Vadodara has directed the petitioner corporation to reinstate the respondent workman on his original post with 25% back wages in the intervening period along with all the benefits.

2. It is the case of the petitioner that the respondent was working as peon in the petitioner corporation since 20.12.1980 . It is also the case of the petitioner that the respondent was remaining on leave without any prior permission on many occasions and during his service tenure, he was on leave without pay to the extent of total 564 days. It is also the case of the petitioner that the respondent was creating difficulties in the administrative functioning of the petitioner on many occasions. It is the case of the petitioner that in spite of frequent instructions to improve, but the respondent did not improve in his work, conduct and behaviour and therefore the respondent came to be discharged from service of the petitioner corporation.

3. Ultimately, the respondent workman raised the industrial dispute which was referred to the Labour Court, Vadodara and numbered as Reference (LCV) No. 885 of 1987. Ultimately, the Labour Court, after appreciating the evidence on record, by its judgment

and award dated 6.10.1994 directed the petitioner corporation to reinstate the respondent workman in service with 25% back wages along with all the benefits.

4. Being aggrieved and dissatisfied with the said judgment and award dated 6.10.1994 passed by the Presiding Officer, Labour Court, Vadodara in Reference (LCV) No. 885 of 1987, the petitioner corporation has filed this petition under Article 227 of the Constitution of India.

5. Heard the learned advocates for the parties and perused the material placed on record.

6. It is submitted by the learned advocate appearing for the petitioner corporation that the respondent workman was remaining on leave without any prior permission on many occasions and he was on leave without pay to the extent of total 564 days. He further submitted that the respondent was creating difficulties in the administrative functioning of the petitioner corporation several times and in spite of frequent instructions to improve, the respondent did not improve in his work, conduct and behaviour and therefore his services came to be terminated. He submitted that since the respondent workman was not discharging the duties sincerely and obediently, the Labour Court has

committed error in awarding 25% back wages in the intervening period. It is, therefore, requested to allow the present petition by quashing and setting aside the impugned judgment and award.

7. On the other hand, at the time of hearing of this petition, it is submitted by the learned advocate appearing on behalf of the respondent – workman that the respondent workman had expired on 28.10.2002 and therefore, the widow Smt.Valiben came to be joined as party in the capacity of legal heir of the respondent workman. He submitted that it is the finding recorded by the Labour Court that no procedure was followed at the time of terminating the services of the respondent workman and that principle of natural justice have not been followed. He submitted that this is a petition under Article 227 of the Constitution of India and this court may not reappreciate the evidence. He tried to justify the judgment and award by the Labour Court, Vadodara awarding reinstatement with continuity in service with 25% back wages. It is, therefore, requested to dismiss this petition.

8. It can be seen from the record that the respondent – workman was in service of the petitioner corporation who expired on 28.10.2002 and his heir widow Smt.Valiben came to be joined as party in the present

proceedings. Therefore, the question of reinstatement now does not survive. The question which requires to be considered by this court is granting of 25% back wages in favour of the respondent – workman for the intervening period along with all the benefits. It is also required to be noted that this petition is under Article 227 of the Constitution of India and this Court is not required to reappreciate the evidence since the Labour Court has passed the judgment and award after appreciating the evidence on record. It can also be seen that it is not the case of the petitioner corporation that they had conducted any departmental inquiry before terminating the services of the workman and no retrenchment compensation was paid. Further, it can be seen from the record that the workman had to remain absent because of ailment and he was suffering from cancer. Considering the facts and circumstances of the case and as stated above, the respondent workman had already expired and the fact that no departmental inquiry was initiated before terminating his services and no retrenchment compensation was paid, I see no reason to interfere with the judgment and award passed by the Labour Court, Vadodara granting 25% back wages in favour of the respondent workman.

9. Under the circumstances, this petition fails. The

petitioner corporation is directed to pay 25% back wages till the date of award to the widow of the deceased respondent workman and the benefits granted by the Labour Court vide judgment and award dated 6.10.1994 in Reference (LCV) No. 885 of 1987 within a period of two months from the date of the receipt of the writ of this order. It is, however, made clear that since the respondent workman has died, the question of reinstatement does not arise. Rule discharges. Interim relief granted earlier stands vacated.

(Sharad D.Dave,J)

srilatha